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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,441	04/09/2004	David A. Brock	38484-076 (BYRK-23)	1340

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MCDERMOTT WILL & EMERY LLP  
ATTN: INTELLECTUAL PROPERTY DEPARTMENT DOCKETING  
28 STATE STREET  
BOSTON, MA 02109

EXAMINER

LEVKOVICH, NATALIA A

ART UNIT	PAPER NUMBER
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1743

DATE MAILED: 04/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/821,441	Applicant(s) BROCK ET AL.	
	Examiner Natalia Levkovich	Art Unit 1743	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5,6,16-20 and 24-29 is/are allowed.
- 6) ☒ Claim(s) 1-4,7-15,21-23 and 30-33 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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**DETAILED ACTION**

***Response to Amendment***

1. Applicant's amendments and remarks filed February 7, 2005 have been acknowledged by the examiner and entered. Claims 34-69 have been canceled and claims 1-33 are pending in this application for consideration.

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

4. Claims 1-4, 7-15, 21-23 and 30-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shaeef (USP 6,239,445) in view of Chow (PGPUB 20020015667)

and in view of Maisch (USP 3,998,145).

Shaeef teaches “an optical inspection apparatus ... adapted to inspect a liquid sample.

The apparatus includes a tray ...that is adapted to be physically coupled to a first liquid

sample carrier ... and a second liquid sample carrier .... The apparatus ... has a light source ...

adapted to illuminate one of the liquid samples associated with one of the liquid sample carriers

...when the liquid sample carrier ... is coupled to the tray ... at an inspection location and a

detector ... adapted to receive light from the liquid sample when the liquid sample is being

illuminated by the light source”(Abstract). “The first liquid sample carrier may be in the form of

a disposable reagent cassette, and the second liquid sample carrier may be adapted to support a

reagent strip...”(Col.2, line 5).

The support tray is adapted to receive liquid carriers of the two types or a removable insert. The

tray has a recess shaped to mate the reagent cassette. “The upper surface ... of the recess ... has

a plurality of upwardly extending locating members, which may be in the form of pins, for

example. When the reagent cassette ... is placed within the support table, the locating members

...are positioned within a plurality of apertures or holes formed in the bottom surface of the

reagent cassette ... When they are so positioned, the locating members ... prevent the reagent

cassette ... from inadvertently sliding out of the recess...”(Col.3, lines 15-35). “The support

tray ... may have a conventional calibration chip ... of a certain color, such as white, disposed

in its upper surface to facilitate calibration in a conventional manner”(Col.3, line35).

“The reagent strip holder ... may have a raised lip ... which is disposed around the periphery of

the reagent strip holder ... to reduce the likelihood of body fluid samples contaminating the

support tray ... “(Col.3, line 60).

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Shaeef teaches that the “modifications of the inspection apparatus ... will be apparent to those of ordinary skill in the art. For example, instead of providing the support tray .. with the recess, the support tray ... could be adapted to be physically coupled to each of the liquid carriers [‘reagent cassette’ and ‘reagent strip’-N.L.] in alternative ways” (Col.5. line35) .

Shaeef does not teach a single insert having its two opposite surfaces adapted to receive two different types of liquid carrier.

Chow discloses “an analytical or preparatory system comprised as a base unit, an adapter, and a substrate. The adapter is attached to an attachment region on the base unit, and the substrate is attached to an attachment region on the adapter. The adapter permits the base unit to be interfaced with a wide variety of different substrates [liquid carriers] to perform chemical and biological analytical analyses and preparatory procedures (Abstract).

The “attachment region in the base unit may be a cavity, well, slot, or other receptacle which receives the adapter, where the dimensions of the receptacle are selected to mate with the adapter. Similarly, the attachment region on the adapter may comprise a receptacle, well, slot, or other space intended to receive the sample substrate and position the substrate properly relative to the adapter and or base unit”(0017).

Additionally, Maisch teaches a food preparation appliance with two reversible contact members :“The two opposing surfaces of a particular contact member are provided with different surface patterns which are adapted to the different purposes to which they are to be put... Each member can be held in two distinct positions, corresponding to the two different ... purposes...In this manner, the apparatus can perform both described functions selectively. The

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apparatus according to the invention combines the function of two known ...and therefore has universal utility "(Col.1, lines 25-35; Col.3, line 20).

Maisch, therefore teaches the usefulness of a single element (adapter), which has two opposite surfaces, adapted for different uses within a single appliance. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have employed a single insert within the apparatus of Shaeef having a first surface adapted to receive a first type of liquid carrier and a second surface adapted to receive a second type of liquid carrier to enhance the effectiveness of the tray assembly through making the assembly of more universal utility as taught by both Chow and Maisch.

With respect to claim 15, it is notoriously known to employ cut-outs in sidewalls of an object (specifically, insert) to facilitate it being grasped by a user. It would have been obvious to employ such cut-outs within the modified apparatus of Shaeef in order to facilitate grasping of the insert by a user.

With respect to claim 23, it would be obvious to one of ordinary skill in the art at the time the invention was made to employ a notch in sidewall of the tray in order to provide for detection of the sample tray by a position detector which would allow for start up of the apparatus upon such detection.

***Allowable Subject Matter***

5. Claims 5-6,16-20,24-29 are allowed over the cited prior art.

***Reasons For Allowable Subject Matter***

6. The prior art does not teach, or fairly suggest a tray assembly having an insert with locating members being a boss and an indent and a reagent cassette having the corresponding locating members as recited in claims 5-6.

The prior art does not teach, or fairly suggest a support tray and an insert having elongated guides comprising grooves and defining sinks in the elongated guides, as well as a tray having a compartment for receiving the insert while the compartment includes stops to improve the engagement between the insert and the tray as recited in claims 16-20 and 27-29.

The prior art does not teach, or fairly suggest a tray assembly including a cam surface for opening a door of the liquid sample as recited in claims 24-26.

***Response to Arguments***

7. Applicant's arguments filed on 02/07/2005 have been fully considered but they are not persuasive.

Applicant argues that the Maisch reference does not relate to analogous art and that the combination of Shaeef, Chow and Maisch does not suggest the invention claimed by the Applicant, but instead, 'simply provides a tray assembly for an optical inspection machine that includes an insert having a pattern for baking waffles or a pattern for grilling meat'.

The Examiner respectfully disagrees with this argument. As it was admitted by Applicant in Remarks, the Chow reference discloses a tray assembly for chemical analysis similar to the tray

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assembly of Shaeef, both having a base and an adapter for receiving a liquid sample. The adapter has one side adapted to receive a sample. The opposite side mates the base. Chow teaches a set of such 'one-sided' adapters to accommodate different types of sample carriers. In case of a similar apparatus designed to receive two different sample carriers, it would be obvious to one of ordinary skill in the art at the time the invention was made to employ one 'two-sided' adapter, instead of two 'one-sided', in order to simplify sample handling and to make the process less time consuming .

Although the Maisch reference relates to food processing, it clearly supports the concept of combining two working surfaces in one member of an apparatus, rather than employing two 'one-sided' members.

### ***Conclusion***

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.



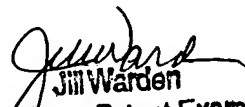
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9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Natalia Levkovich whose telephone number is 571-272-2462.

The examiner can normally be reached on Mon-Fri, 8 a.m.-4p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Jill Warden  
Supervisory Patent Examiner  
Technology Center 1700